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 Committee on Criminal Justice

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November 1, 2000

The Honorable Rick Perry
 Lieutenant Governor of the State of Texas
 Post Office Box 12068
 Austin, Texas 78711

Dear Governor Perry:

The Senate Committee on Criminal Justice is pleased to submit its final report on Interim Charge Seven. The mandate of Charge Seven has prompted the Committee to:

Review the Interstate Probation and Parole Compact proposed through the National Institute of Corrections, which is scheduled for release in December 1999. The Committee shall make a recommendation as to whether Texas should enter into the compact, considering the fiscal impact the compact may have on state, private, and local entities.

In compliance with your request, a copy of this report will be circulated to all Senators and other interested parties.

Respectfully submitted,

Senator Ken Armbrister Chairman

Senator Robert Duncan
 Vice Chairman

Senator Mike Jackson

Senator Jane Nelson

Senator Florence Shapiro

Senator Royce West

Senator John Whitmire

ACKNOWLEDGMENTS

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Kathy Winckler, Washington Liaison, Texas Department of Criminal Justice

Ray Parra, Compact Administrator, Texas Department of Criminal Justice

BACKGROUND

In 1934 Congress passed legislation that gave states the authority to enter into agreements for the prevention of crime and enforcement of laws. This legislation provided the constitutionally required congressional consent necessary to enter into an interstate compact for regulating the movement across state lines of adult offenders subject to parole and probation supervision. In the years thereafter, all 50 states and the United States Virgin Islands, District of Columbia and Puerto Rico have adopted the Interstate Compact for the Supervision of Parolees and Probationers. In Texas, the compact is codified in Article 42.11 of the Texas Code of Criminal Procedure, noted in Appendix A. As executed by the Governor, the compact controls the movement and supervision of adult probationers or parolees from a sending state, where they have been convicted of a crime, to a receiving state, where jurisdiction over the offender will continue until any sentence is disposed.

In Texas, the compact administrator responsible for our participation in this interstate compact is housed within the Programs and Services Division of the Texas Department of Criminal Justice. Texas is a model state for compact administration, with an interstate compact administrator authorized to appoint two deputy administrators who can each independently focus on probation or parole. By statute, the executive director of the Department of Criminal Justice or his designee, in this instance the interstate compact

administrator, is authorized and directed to insure full implementation of the compact.

The Texas Interstate Compact Office appears to be effective in performing its task of arranging the transfer of supervision of offenders. The Texas office has one of the highest volumes of offender transfers, handling more than 20,000 offenders annually, nearly 70 percent of whom leave Texas to be supervised by other states. The office has created an electronic database containing the names, locations, and vital information on all interstate compact offenders that allows instant access to information about the location and activities of any offender. A full-time trainer travels the state to instruct parole and probation officials, judges, and other interested groups about the existence of and procedures related to the interstate compact.

Society and public safety concerns have changed greatly since the adoption of the initial interstate compact in the 1950s and many states have not adapted to meet the challenges of growing offender populations and better communication and transportation modes. The results of a 1997 survey by the National Institute of Corrections show that over 115,000 adult offenders had been transferred from one state to another, and it is estimated that an equal number of offenders receive authorization annually to travel across state lines for various reasons. More recent numbers indicate that the movement of nearly one quarter of a million offenders is currently governed by the interstate compact.

Proponents of the proposed Interstate Compact for Adult Offender Supervision believe that the existing compact provides an inadequate structure to ensure public safety. The majority of states do not devote the resources to the interstate compact operation that Texas does. An offender's request or judicial order for transfer between jurisdictions routinely takes months to be processed. In some instances offenders, especially those placed on probation, must be returned to their states of residence whose interstate compact office lacks the staff and equipment to investigate the offender's living situation and effect the transfer. Victims' rights groups have complained that offenders escape supervision because overwhelmed interstate compact offices cannot respond quickly or adequately enough to ensure the offender's compliance. Moreover, states that do not meet their obligations under the compact cannot readily be held accountable by the existing governance structure, the proponents say, because it lacks the ability to take any legal action other than bringing an original action in the United States Supreme Court.

THE NATIONAL INSTITUTE OF CORRECTIONS PROPOSAL

The proposed Interstate Compact for Adult Offender Supervision ("sponsored compact" or "NIC-sponsored compact") was drafted by a working group organized by the National Institute of Corrections ("NIC"), with advisory support from the Council of State Governments' ("CSG") Louisville, Kentucky office. The drafting team members consisted of a legislator, a victims' representative, several compact administrators, and representatives from corrections, parole and probation authorities, attorneys general, and the courts.

Prior to organizing the drafting team, NIC conducted a public hearing and a field evaluation survey of the existing Interstate Compact. NIC concluded that, while those working with the compact evaluated it as "overall...working adequately," aspects of the compact presented a "more than moderate problem." The perceived problems were:

- "Rampant" violations by compacting states of the rules adopted by the compact administrators, which suggested a need for modifying the rules;
- Slowness of compacting authorities in processing cases and responding to requests for information, leading to gaps in offender supervision;
- Under- or non-utilization of computer technology to communicate, transfer information about offenders, track offender movement, and document compact activity;
- Overuse of emergency transfers resulting in lack of sufficient planning and investigation of the offender's living plan, and arrival of offenders in receiving states without adequate planning, or even consent of the receiving state;

- Concern of crime victims that victims are not notified and given an opportunity to comment before an offender relocates to a new state;
- Inadequate provisions for investigating, assessing the risk factors, and registering high-risk offenders, particularly sex offenders.

Respondents to the 1997 NIC survey called for changes to the mechanisms implementing the compact and revision of the rules, but did not suggest replacing the existing compact.

NIC presented the findings from the field survey and public hearing to their Advisory Board. The Board concluded that the ineffectiveness of the compact's governing body (the compact administrators, who comprise the rulemaking body, the Parole and Probation Compact Administrators' Association) was a fundamental problem with the compact. The Advisory Board therefore recommended to NIC that attempts to address the identified problems be postponed until the governance of the compact was improved. NIC then convened a group of advisors who concluded that it was necessary to amend the compact to increase the power of the states "to make and enforce rules through a new governing structure." This group's deliberations led to the formation of the previously described drafting group, which produced the NIC-sponsored compact.

PROVISIONS OF THE NIC-SPONSORED COMPACT

Interstate Commission The NIC-sponsored compact creates the Interstate Commission, a governing body composed of compact administrators and members appointed by interested national organizations, such as organizations of governors, legislators, attorneys general, and victims' rights groups. The commission members who are compact administrators would be empowered to vote on matters related to the compact, while the members who are not compact administrators would have no vote. An executive committee composed of Interstate Commission officers, members, and others as determined under compact bylaw would oversee the day-to-day activities of the Commission. The inclusion of non-compact administrator members on the executive committee presents the possibility of persons other than those involved in the routine administration of compact matters having substantial input on compact operations.

The duties of the Interstate Commission would be broad, including the power to "oversee, supervise, and coordinate the interstate movement of offenders," and to enforce compliance with compact provisions by any means, including judicial process. The most significant power of the Interstate Commission would be to adopt rules. "Rules" are defined as "acts of the Interstate Commission substantially affecting interested parties in addition to the Interstate Commission, which...have the force and effect of law in the compacting states." Other proposed compact language again states that the rules so adopted would "have the force and effect of statutory law and [would be] binding in the

compacting states to the extent and in the manner provided in this compact." Hawaii, in its adoption of the NIC-sponsored compact, amended the language to eliminate this reference to full force and effect of statutory law in certain places.

The proposition that rules duly adopted by an interstate compact have the force of law appears to be supported by caselaw. A 1951 U.S. Supreme Court decision, *State ex rel. Dyer v. Sims*, 341 U.S. 22, 71 S. Ct. 557, held that where a state legislature has entered into an interstate compact, the legislature cannot enact provisions inconsistent with the compact or the rules promulgated under the compact. Therefore, state laws that are inconsistent with the compact or its rules are superseded to the extent of the conflict. A later Supreme Court case, *Cuyler v. Adams*, 449 U.S. 433, 101 S. Ct. 703, held that questions arising relating to a congressionally authorized compact or its rules present questions of federal law that may be resolved in federal courts.

However, the NIC-sponsored compact contains a provision that appears to allow states to avoid conflicts with their state constitutions. Where any "obligations, duties, powers or jurisdiction given to the Interstate Commission" would exceed the limits of a state's constitution, those obligations, duties, powers or jurisdictions would remain in the state and would be exercised by the state agency to which they are delegated by the law in existence at the time of the compact's adoption.

State Council Each compacting state would be required to establish a State Council

composed of members appointed in a manner and by a power not specified. While the state may choose the members, there must be at least one representative from the legislative, judicial, and executive branches of state government, from a victims' rights group, and the compact administrator.

The State Council is charged with appointing the state's voting representative to the Interstate Commission. However, the State Council has no discretion about who it appoints to the Interstate Commission: it is required to appoint the state's compact administrator. The compact administrator may be appointed by either the State Council or by the governor in consultation with the legislature and the judiciary. Under the existing compact, the compact administrator is appointed by the governor; Senate confirmation is not required.

In addition to its appointment responsibilities, the State Council is charged with "exercis[ing] oversight and advocacy concerning its participation in Interstate Commission activities and...development of policy concerning operations and procedures of the compact..." Texas currently has an advisory board that is similar to the State Council whose members are appointed by the governor. The advisory board was created by the Texas Department of Criminal Justice to facilitate the exchange of information regarding interstate compact procedures among stakeholders in the process: judges, parole and community supervision officials, and the compact administrator. This group, with the addition of representatives from the required groups, could form the State Council under

the NIC-sponsored compact. It should be noted that the function of the current body is wholly advisory and informational, not one of controlling day-to-day activities or advocacy and policy development. Adding these duties to its role would be a fundamental change that would lead to confusion and overlapping of chains of command. Proponents of the NIC-sponsored compact have responded to concerns about this problem by indicating that the State Council's role could be limited if the state deems it necessary, and that such a change to the compact would likely be nonmaterial.

Resolution of disputes arising under the compact The NIC-sponsored compact would allow the Interstate Commission to find a state in default and to impose sanctions upon the state for violations of interstate compact rules or procedures. These sanctions may include the imposition of fines, requiring states to take remedial training, suspension, or even termination of membership in the compact. In addition, the Interstate Commission may seek enforcement of compact provisions through legal action in either the District Court for the District of Columbia or in the federal judicial district in which the Interstate Commission has its offices.

Financial participation of states The Interstate Commission is authorized by the proposed compact to "levy on and collect an annual assessment from each compacting state...which must be in a total amount sufficient to cover the Interstate Commission's annual budget." The annual assessment is to be based on a formula to be set by the Interstate Commission, taking into consideration the population of the state and the volume

of interstate movement of offenders. NIC has projected that, using these two elements, a formula could be adopted placing states in one of five groups, with Texas being in the group with the most populous and active states. Based on the sponsor's projected \$1.4 million annual budget for the new Interstate Commission, Texas' annual dues would be \$46,000 at the inception of the compact. This compares to current annual dues for each state of \$2,000. The Parole and Probation Compact Administrators Association recently raised dues to this amount from the \$400 annual assessment that had existed for many years. While NIC has estimated the first year's budget at \$1.4 million, their estimates do not include start-up costs, which could be considerably more, and for which they hope to get federal grant funding.

At least one state, Colorado, amended the NIC-sponsored compact language to limit the state's financial responsibility. This alteration obligates Colorado to pay only its share of up to \$2.5 million of the Interstate Commission's budgeted expenses. Any amount in excess of the \$2.5 million would have to be borne by other compacting states that had not enacted similar limitations. The NIC-sponsored compact's drafters feel that such a limitation does not constitute a material change to the compact so long as it is based upon the state's constitutional debt limitation.

The NIC-sponsored compact can be reviewed in its entirety at Appendix B.

ADOPTION OF THE NIC-SPONSORED COMPACT

As of September 2000, eight states have adopted the NIC-sponsored compact, and in California, it awaits the governor's signature. Twenty-seven states' legislatures met in 2000, but failed to take up the matter. NIC and CSG intend to continue their efforts at passage in 2001. To become effective, a new compact requires that 35 states adopt it. Upon adoption by the 35th state, the Interstate Commission will be organized to adopt the initial rules and transition procedures for the new compacting states. Only those states that have enacted the compact will have a vote on the adoption of rules. Those states that have adopted the compact with nonsubstantive alteration are detailed in Appendix C.

While it remains difficult to predict the likelihood or timing of passage by the 35th state, it seems probable that as more states adopt the compact, other states will be more inclined to adopt it as well. If Texas chooses not to adopt the NIC-sponsored compact in 2001 and adoption by the 35th state occurs before 2003, Texas would find itself shut out of the rulemaking process and faced with the prospect of dealing with the new compacting states on their own terms.

THE REVISION OF THE NIC-SPONSORED INTERSTATE COMPACT

The Executive Director of the Texas Department of Criminal Justice was among those to whom the first draft of the NIC-sponsored compact was circulated. The Executive Director and the Texas compact administrator responded to NIC, offering suggestions for changes. Among the changes recommended were: inclusion of acceptance criteria for offenders; making the State Council's role advisory rather than policymaking; gubernatorial appointment of the compact administrator; requiring appointment of the compact administrator to the Interstate Commission; and numerous non-substantive corrections. Of the recommendations, only appointment of the compact administrator to the Interstate Commission was accepted by NIC.

Following receipt of comments from interested groups, and prior to its review by state legislators, NIC released the sponsored compact in its final form. In consultation with staff of the Senate Criminal Justice Committee and other legislative staff, the Texas Department of Criminal Justice undertook a revision of the NIC-sponsored compact ("the revision") to incorporate the Executive Director's and compact administrator's recommendations and to better accommodate Texas' statutory and constitutional needs.

The revision makes both material and non-material alterations to the NIC-sponsored compact and retains the original's form. The changes include the addition of criteria for acceptance of offenders, inclusion of waiver of extradition language, revision of the role of

the State Council, limiting of the powers of the Interstate Commission, change to the appointment procedure for the compact administrator, and limiting of the sanctions available for state defaults. Each is described below.

Acceptance criteria for offenders The revision sets out criteria for offender eligibility for interstate transfer. These criteria, which are identical to those in the existing compact, are:

- The offender has been an actual inhabitant of the receiving state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which supervision has been imposed; or
- The offender has family residing continuously for one year or more within the receiving State and can find employment in the receiving state or has a bona fide offer of admission to an accredited educational program or institution; or
- The receiving state consents to the offender's residing in that state.

Setting out acceptance criteria in the body of the compact allows legislatures to debate the merits of adopting a new compact with full knowledge of the range of offenders who could come into and be sent from their state. Under the NIC-sponsored compact, offender acceptance criteria and all other substantive provisions are dealt with in the rulemaking process by the Interstate Commission with no further input from legislators. Drafters of the NIC-sponsored compact deliberately rejected placing specific details such as offender acceptance criteria in the compact because agreement on the criteria to be adopted could not be reached. They therefore agreed to leave this matter for the rulemaking process. In addition, drafters feared that placing offender acceptance criteria, as well as other substantive provisions (e.g., waiver of extradition) in the compact would leave the compact

vulnerable to having those provisions struck as unconstitutional.

Waiver of extradition When offenders violate the terms of their supervision in another state, they are subject to being returned to the sending state. The procedure for their return, set out in the Uniform Criminal Extradition Act, requires the governor of a state to surrender on demand of the executive authority of another state, a fugitive present in the state. However, under the existing compact, states have explicitly waived the requirement that extradition be obtained, and instead allow law enforcement officers to enter a receiving state, apprehend an offender, and return the offender to the sending state. This provision does not appear in the NIC-sponsored compact, the drafters again preferring to leave this matter to the rulemaking process. The revision would restore the waiver of extradition provision.

Making the State Council's role advisory rather than policymaking While the existing compact does not provide for a statewide policymaking body for the interstate compact, the NIC-sponsored compact would require that states establish such a body, and that this State Council have oversight, advocacy and policymaking powers. Under the revision, the State Council's role would be advisory, similar in nature to the role of the current interstate compact advisory board. Limiting the State Council to an advisory role avoids two problems in Texas. First, members appointed to the State Council who perform wholly advisory roles are not officers of the state and thus are not subject to the appointment requirements set out in the Texas constitution. Second, the Texas Interstate Compact

office operates as part of the Texas Department of Criminal Justice, similar to the Community Justice Assistance and Parole Divisions. As such there is uniformity in the application of policy and avoidance of duplication of resources. A board with oversight and policymaking authority would cause confusion regarding chain of command and who has final policymaking authority.

Gubernatorial appointment of the compact administrator The existing compact authorizes the governor of each compacting state to appoint a person who, acting together with counterparts from other states, administers the activities of the interstate compact. The NIC-sponsored compact would allow states to choose one of two methods for compact administrator appointment: by the governor in consultation with the legislature and judiciary or by the State Council. The revision allows states to designate the method of selecting a compact administrator. This allows states to choose the method that best comports with their own state laws and practices.

Powers of the Interstate Commission The existing compact allows compact administrators to join with their counterparts to promulgate regulations to carry out the terms of the compact. As drafted, the NIC-sponsored compact creates the Interstate Commission and gives it broad power to: "oversee [and] supervise the interstate movement of offenders subject to the terms of...the compact commission;" and "to promulgate rules which shall have the force and effect of statutory law and shall be binding

in the compacting states to the extent and in the manner provided in this compact." Taken together these provisions could be construed to allow the Interstate Commission to directly supervise the internal activities of a state's interstate compact office. The revision deletes these provisions. Instead, in the revision, the Interstate Commission is empowered to "coordinate the interstate movement of offenders" and "promulgate rules for the interstate movement of adult offenders subject to this compact." This is consistent with the grant of authority to designated officers (compact administrators) contained in the existing compact and avoids unnecessary external control of the state's interstate compact office. However as previously discussed, eliminating the "force and effect of statutory law" language may have no actual effect since the courts seemed to have determined that compact rules do have the quality of state law.

Nonsubstantive changes In addition to the preceding changes, the revision makes numerous other changes to the NIC-sponsored compact. These include:

- Restricting service on the Executive Committee to voting members of the Interstate Commission;
- Inserting a definition of "designee," the person who serves on the Interstate Commission in the absence or inability of the compact administrator, and allowing the state to choose its own method of appointing the designee rather than giving the power to the State Council;
- Deleting language that requires the Interstate Commission rather than the state's attorney general to defend the states' compact administrators in any action brought under the compact;
- Reducing to 15 the number of states necessary to request a special-called meeting of the Interstate Commission. This has been reduced to 15 because of the difficulty

involved in getting consent from as many as 26 members, the number necessary if all 50 states adopt the compact;

- Deleting termination from the compact as a sanction for default. This was removed because sufficient other means exist to bring defaulting states into compliance, and the act of a state's legislature should not be overturned by an appointed body;
- Defining the acts that constitute default, including: failing to pay the annual assessment levied by the Interstate Commission; refusing, following reasonable notification, to remove an offender from a receiving State; sending an offender to a receiving State without receiving consent from the compact administrator of the receiving State; or unreasonably refusing to accept an offender for supervision; and,
- Harmonizing language related to the grant of immunity to officers, and employees of the Interstate Commission for acts, errors or omissions that occur within the scope of employment. Under the proposed compact, immunity would be conferred unless those acts, errors or omissions were caused by "intentional or willful and wanton misconduct." These somewhat archaic terms have been deleted, and the terms "intentional misconduct or gross negligence" have been substituted.

MATERIAL VERSUS NONMATERIAL CHANGES TO THE NIC-SPONSORED COMPACT

The distinction between material and nonmaterial changes to the NIC-sponsored compact is an important one. An interstate compact is an agreement among states to perform duties according to the terms of their agreement. In other words, a compact is a contract, subject to the black letter law of contracts and to the constitutional prohibition against states passing laws that impair the obligation of contract.

Ordinarily the parties' agreement to the terms of a contract is demonstrated by their signatures on identical counterparts of the agreement. In the case of interstate compacts, ideally the states wishing to demonstrate agreement enact legislation embodying identical language. However, in partial response to Texas' comments over provisions of the NIC-

sponsored contract, the proponents have asserted that Texas, or any other state, could enact the NIC-sponsored compact with nonmaterial changes without placing at risk the essential agreement. NIC and CSG have opined that the following changes would be non-material:

- Revision of the manner of appointment of the compact administrator so that the state determines by law how appointment is made rather than appointment being made by the State Council;
- Placing of a cap on the amount of appropriation that the state will contribute to the funding of the Interstate Commission, as long as the cap is based on a state's constitutionally imposed limitation on debt;
- Limiting the State Council's role to a wholly advisory one.

In contrast, NIC and CSG feel that these changes would be deemed to be material:

- Addition of acceptance criteria for offenders;
- Deletion of termination as a remedy for a state's default;
- Addition of a waiver of extradition provision;
- Deletion of language stating that rules promulgated under the compact have the force and effect of law;
- Lowering to 15 the number of states necessary to call a meeting of the Interstate Commission.

Material changes, in the proponents' opinion, would be those that deal with the substance of the agreement of the parties, while non-material changes would be those dealing with the state's internal processes.

RECOMMENDATIONS

After review of the NIC-sponsored Interstate Compact for Adult Offender Supervision and examination of alternatives, the Committee summarizes the following alternatives for consideration:

Plan A: Adopt the Interstate Compact for Adult Offender Supervision as proposed by the National Institute of Corrections without amendment;

Plan B: Adopt a substantially revised Interstate Compact for Adult Offender Supervision in a form similar to that shown in Appendix D (the Revision);

Plan C: Adopt the NIC-sponsored compact with non-material changes and place a sunset date on the legislation by which time rules must have been adopted consistent with policies set forth in a resolution adopted in conjunction with the compact.

Plan A

Adoption of the Interstate Compact for Adult Offender Supervision by the 77th Legislature would ensure that Texas becomes a compact party and would not subject Texas to the objection that the state had not agreed to the same terms as all other states. Texas would have clearly agreed to the terms of the compact and would be a full party to the rulemaking effort when and if the 35th state adopts the proposed compact. Since it seems that momentum is gathering in other states for passage of the compact, adoption of the compact sooner rather than later places Texas in a better position to influence the rulemaking and other critical decisions.

Notwithstanding that benefit, it seems clear that the NIC-sponsored compact has deferred all decisions on substantive matters to be made by the appointed compact administrators comprising the Interstate Commission rather than allowing legislators to vote to establish the policies of their choosing.

In addition the NIC-sponsored compact (as well as the revision) establishes a new and more costly interstate agency to oversee the states' handling of interstate offenders. It is undoubted that some states need encouragement to improve their handling of interstate offenders. But it is questionable that a bureaucracy with wide-ranging powers is essential to bringing about improvement.

Plan B

The revision represents a best case scenario for Texas, and minimizes statutory changes on issues important to the state. The 77th Legislature would further limit the delegation of important decisions regarding the transfer and acceptance of offenders than under the NIC-sponsored compact. Current statutory law would be more closely followed with adoption of the revision. However, if Texas were to adopt this version rather than the NIC-sponsored compact, other compacting states, or possibly offenders bringing challenges to their supervision, could argue that Texas is not a compacting party. This disability would remain a potential threat throughout the life of the compact. It is also questionable that the revision, which establishes the same large, costly and potentially intrusive bureaucracy, is worth the expenditure of time and resources that would be necessary to interest other states in its passage. Possibly most troublesome is the potential that the 35th state could pass the NIC-sponsored compact after Texas had adopted the revision, foreclosing the opportunity for Texas to participate in the initial organization and rulemaking with the new interstate compact organization.

Plan C

Another alternative to the 77th Legislature is to adopt the NIC-sponsored compact with those changes deemed non-material, and at the same time to pass a resolution setting forth Texas' expectations for the rules that will be adopted. Similar to a sunset review with state agencies, Texas could condition its continued participation in the compact on the adoption of rules substantially similar to those set out in the resolution, within a time certain after passage by the 35th state. Included in those anticipated rules could be offender acceptance criteria, waiver of extradition, and a limitation on the total cost of the Interstate Commission's operations. A sunset date could be provided whereby the legislation passing the compact expires unless assurances are made by an appropriate authority that complying rules have been adopted. This option allows Texas to ensure its participation in the rulemaking process when and if the 35th state adopts the compact and avoids the possibility that some future court decision should find Texas was not a party to the compact.

SUMMARY

As the fiscal note that follows suggests, any plan chosen by the 77th Legislature will represent an increase in the state's financial commitment to offender supervision. However with the changes in technology and transportation, the time is right for Texas to join other states in fashioning a responsible governance model for the tracking of offenders across jurisdictional boundaries. The public safety of our citizenry and the future of our society depend on the adequate monitoring and appropriate response to citizen and offender concerns. A chart examining the differences between the current compact, the NIC-sponsored compact, and the revision is attached as Appendix E. The 77th Legislature must quickly move to enact some version of the NIC-sponsored compact to continue Texas' leadership in this important area.

**Estimated Fiscal Impact of
Report Recommendations from the Senate Criminal Justice Committee**

Change	Recommendation	First Full Year Probable Savings/(Cost) Gains/(Losses)	Estimate Source	Comments
7	<p>7.1 After review of the proposed Interstate Compact for Adult Offender Supervision and examination of alternatives, the Committee suggests the following alternatives for consideration.</p> <p><u>Plan A</u>- Adopt the Interstate Compact for Adult Offender Supervision as proposed by the National Institute of Corrections without amendment.</p> <p><u>Plan B</u>- Adopt a substantially revised Interstate Compact for Adult Offender Supervision in a form similar to that shown in the Texas Revision.</p> <p><u>Plan C</u>- Adopt the proposed compact with non-material changes and place a sunset date on the legislation by which time rules must have been adopted consistent with policies set forth in a resolution adopted in conjunction with the compact.</p>	No Significant Fiscal Impact	Texas Dept. of Criminal Justice	Participation in the proposed Interstate Compact for Adult Offender Supervision would have no significant fiscal impact. As a participating state, Texas' annual dues would be \$46,000, compared to current annual dues of \$2,000. No significant fiscal implication to units of local government is anticipated.

APPENDIX

A

***194810 Vernon's Ann. Texas C.C.P. Art. 42.11**

**VERNON'S TEXAS STATUTES
AND CODES ANNOTATED
CODE OF CRIMINAL
PROCEDURE
PART I--CODE OF CRIMINAL
PROCEDURE OF 1965
PROCEEDINGS AFTER VERDICT
CHAPTER FORTY-TWO--
JUDGMENT AND SENTENCE**

Current through End of 1999 Reg. Sess.

Art. 42.11. [781c] Uniform Act for out-of-State probationer and parolee supervision

Sec. 1. This Act may be cited as the Uniform Act for out-of-State probationer and parolee supervision.

Sec. 2. The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of Texas with any of the United States legally joining therein in the form substantially as follows:

A COMPACT

Entering into by and among the contracting state, signatories hereto, with the consent of the Congress of the United States of America, granted by an Act entitled "An Act granting the consent of Congress to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes".

The contracting States solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a State party to this compact (herein called "sending State"), to permit any person convicted of an offense within such State and placed on probation or released on parole to reside in any

other State party to this compact (herein called "receiving State"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving State and can obtain employment there; and

(b) Though not a resident of the receiving State and not having his family residing there, the receiving State consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving State to investigate the home and prospective employment of such person.

A resident of the receiving State, within the meaning of this section is one who has been an actual inhabitant of such State continuously for more than one year prior to his coming to the sending State and has not resided within the sending State more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

***194811** (2) That each receiving State will assume the duties of visitation of and supervision over probationers or parolees of any sending State and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending State may at all times enter a receiving State and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of States party hereto, as to such persons. The decision of the sending State to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving State; provided, however, that if at the time when a State seeks to retake a probationer or parolee there should be pending against him

within the receiving State any criminal charge, or he should be suspected of having committed within such State a criminal offense, he shall not be retaken without the consent of the receiving State until discharged from prosecution or from any imprisonment for such offense.

(4) That the duly accredited officers of the sending State will be permitted to transport prisoners being retaken through any and all States party to this compact, without interference.

(5) That the Governor of each State may designate an officer who, acting jointly with like officers of other contracting States, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any State as between it and other State or States so executing. When executed it shall have the full force and effect of law within such State, the form of execution to be in accordance with the laws of the executing State.

(7) That this compact shall continue in force and remain binding upon each executing State until renounced by it. The duties and obligations hereunder of a renouncing State shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending State. Renunciation of this compact shall be by the same authority which executed it, by sending six months notice in writing of its intention to withdraw from the compact to the other States party hereto.

***194812** Sec. 3. The title of the officer designated by the Governor under Subdivision (5) of the compact is the Interstate Compact Administrator for Probation and Parole. The Interstate Compact Administrator is authorized to appoint two Deputy Interstate Compact Administrators, with one deputy primarily responsible for issues dealing with probationers and the other primarily responsible for issues dealing with parolees. The executive director of the Texas Department of Criminal Justice or the

executive director's designee is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular.

Sec. 3a. Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17, § 7.01(27), eff. Nov. 12, 1991.

CREDIT(S)

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Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 547, ch. 233, § 1, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.134, eff. Aug. 29, 1977.

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Sec. 3a amended by Acts 1985, 69th Leg., ch. 479, § 162, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 939, § 1, eff. Sept. 1, 1987; repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17, § 7.01(27), eff. Nov. 12, 1991; Sec. 1 amended by Acts 1995, 74th Leg., ch. 321, § 3.002, eff. Sept. 1, 1995; Sec. 3 amended by Acts 1997, 75th Leg., ch. 514, § 1, eff. May 31, 1997.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

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Complementary Legislation:
 Ala.--Code 1975, § 15-22-1.
 Alaska--AS 33.36.110, 33.36.120.
 Ariz.--A.R.S. §§ 31-461 to 31-465.
 Ark.--A.C.A. §§ 16-93-901 to 16-93-903.
 Cal.--West's Ann.Cal.Pen.Code, §§ 11175 to 11179.
 Colo.--West's C.R.S.A. §§ 24-60-301 to 24-60-309.
 Conn.--C.G.S.A. §§ 54-132 to 54-138.
 Del.--11 Del.C. §§ 4358, 4359.
 D.C.--D.C.Code 1981, §§ 24-251 to 24-253.
 Fla.--West's F.S.A. §§ 949.07 to 949.09.
 Ga.--O.C.G.A. §§ 49-2-70, 49-2-71.
 Hawaii--HRS §§ 353-81, 353-82.
 Idaho--I.C. § 20-301, 20-302.
 Ill.--S.H.A. 730 ILCS 5/3-3-11.
***194813** Ind.--West's A.I.C. 11-13-4-1, 11-13-4-2.
 Iowa--I.C.A. § 907A.1.
 Kan.--K.S.A. 22-4101 et seq.
 Ky.--KRS 439.560.
 La.--LSA--R.S. 15:574.14.

Me.--34-A M.R.S.A. §§ 9801 to 9864.
 Md.--Code 1957, art. 41, §§ 4-801 to 4-803.
 Mass.--M.G.L.A. c. 127, §§ 151A to 151G.
 Mich.--M.C.L.A. §§ 798.101 to 798.103.
 Minn.--M.S.A. § 243.16.
 Miss.--Code 1972, § 47-7-71.
 Mo.--V.A.M.S. § 217.810.
 Mont.--MCA 46-23-1101 to 46-23-1106.
 Neb.--R.R.S.1943, §§ 29-2637, 29-2638.
 Nev.--N.R.S. 213.180 to 213.210.
 N.H.--RSA 651-A:25.
 N.J.--N.J.S.A. 2A:168-14 to 2A:168-17.
 N.M.--NMSA 1978, §§ 31-5-1, 31-5-2.
 N.Y.--McKinney's Executive Law § 259-m.
 N.C.--G.S. §§ 148-65.1, 148-65.2.
 N.D.--NDCC 12-56-01, 12-56-02.
 Ohio--R.C. §§ 5149.17 to 5149.23.
 Okl.--57 Okl.St. Ann. §§ 347 to 349.
 Ore.--ORS 144.610 to 144.620.
 Pa.--61 P.S. §§ 321, 322.
 Puerto Rico--4 L.P.R.A. §§ 637 to 639.
 *194814 R.I.--Gen.Laws 1956, §§ 13-9-1 to 13-9-3.
 S.C.--Code 1976, 24-21-810 to 24-21-830.
 S.D.--SDCL 24-16-1 to 24-16-5.
 Tenn.--West's Tenn.Code, § 40-28-401.
 U.S.--4 U.S.C.A. § 112.
 Utah--U.C.A.1953, 77-27-24 to 77-27-31.
 Vt.--28 V.S.A. § 1301.
 Virgin Islands--5 V.I.C. §§ 4631 to 4633.
 Va.--Code 1950, §§ 53.1-166, 53.1-167.
 Wash.--West's RCWA 9.95.270.
 W.Va.--Code, 28-6-1, 28-6-2.
 Wis.--W.S.A. 304.13.
 Wyo.--W.S.1977, §§ 7-13-412 to 7-13-417.

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The 1973 amendment added § 3.

The 1977 amendment added § 3a.

Prior Laws:

Vernon's Ann.C.C.P.1925, art. 781c.
 Acts 1951, 52nd Leg., p. 796, ch. 440.

REFERENCES

CROSS REFERENCES

Adult parole and mandatory supervision, see V.T.C.A.,
 Government Code § 508.141 et seq.

ADMINISTRATIVE CODE REFERENCES

Board of Pardons and Paroles,
 Parole, see 37 TAC § 145.1 et seq.
 Rules and conditions of mandatory supervision, see 37
 TAC § 149.1 et seq.

LAW REVIEW COMMENTARIES

Interstate extradition to answer criminal charges. Ray
 Moses, with assistance by Carl E. F. Dally, 9 S.Tex.L.J.
 166, 183 (1967).

LIBRARY REFERENCES

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Pardon and Parole ☞ 14 et seq.
 States ☞ 6.
 C.J.S. Pardons §§ 1, 16 et seq.
 *194815 C.J.S. States §§ 31, 32, 143.

Texts and Treatises

25 Texas Jur 3d, Crim L §§3720, 3730; 26 Texas Jur 3d,
 Crim I. § 3909; 58 Texas Jur 3d, Penal Inst §§118, 155,
 156, 159.

58 Texas Jur 3d, Penal Inst § 147, 148.

ANNOTATIONS

NOTES OF DECISIONS

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1. Validity

Within Uniform Act for Out-of-State Parolee Supervision
 (Vernon's Ann.C.C.P.1925, art. 781c), stating that
 Governor is authorized to execute compact on behalf of
 state of Texas with any of United States legally joining
 therein in form substantially as follows and thereafter
 setting out compact, "substantially" means all that is
 necessary or essential and said article required that compact
 to be executed by Governor embody substance of form set
 out therein but did not require that it be in exact words set
 out in said article and said article was not unconstitutional
 on ground that because of use of word substantially, the
 statute was a delegation of legislative authority to executive
 branch of government. Ex parte Smith (Cr.App. 1960) 170
 Tex.Crim. 188, 339 S.W.2d 671.

2. Construction and application

Where it appeared that appellant had been indicted by
 grand jury in two cases of burglary and that Florida since
 commission of burglaries had issued warrant for appellant's
 re-arrest so that he might return to Florida to serve
 approximately six years remaining on an armed robbery
 conviction in that State, and that since hearing on
 application a fugitive warrant had been issued in connection
 with Florida case, any question as to sufficiency of original

warrant or the \$5,000 additional bond set thereon had become moot, and it could not be said that bail in the sum of \$5,000 each in the two burglary cases was excessive. Ex parte Newsom (Cr.App. 1959) 168 Tex.Crim. 128, 324 S.W.2d 214.

Petitioner, who was a California parolee being supervised in Texas and who was taken into custody upon order of the administrator of interstate compact for Texas for violation of his parole and who was also held for three felonies committed in Texas, was properly remanded in habeas corpus proceeding to be held in custody until felony charges were disposed of and thereafter to be delivered to California. Ex parte Cantrell (Cr.App. 1962) 172 Tex.Crim. 646, 362 S.W.2d 115.

***194816** The Uniform Act For Out-Of-State Parolee Supervision (this article) does not require a transfer of supervision of probationer when permission is granted probationer to leave the state. Cox v. State (Cr.App. 1969) 445 S.W.2d 200.

New Mexico sheriff was not entitled to arrest defendant in Texas for parole or probation violation where defendant was not being supervised in Texas under this article. Ex parte Chambers (Cr.App. 1975) 525 S.W.2d 191.

Authorities from another state cannot come into Texas and, unrestricted, arrest and reconfine a parolee who is not being supervised by Texas under this article but Texas can apprehend and remand through its own authorities an absconding parolee who has signed a prerelease waiver of extradition to the state which granted parole. Ex parte Johnson (Cr.App. 1980) 610 S.W.2d 757.

Even though he had not been transferred to Texas for supervision, parolee's agreement to voluntarily return to Illinois for parole violation was sufficient to support hearing court's order returning him to Illinois following his arrest for being intoxicated in a public place. Ex parte Johnson (Cr.App. 1980) 610 S.W.2d 757.

Fugitive's absence from demanding state at time of probation violations following transfer of probation to asylum state would not entitle fugitive to avoid being returned to demanding state, in that statute permits fugitive to be retaken and returned to demanding state without following requirements of extradition. Yost v. State (App. 14 Dist. 1993) 861 S.W.2d 73.

3. Bail

Under Uniform Act for Out-of-State Parolee Supervision (Vernon's Ann.C.C.P.1925, art. 781c) and the Adult Probation and Parole Law of 1957 [Vernon's Ann.C.C.P.1925, art. 781d (see, now, art. 42.12)], a parolee from another state who was being supervised in Texas could be held in custody upon order of administrator of the interstate compact for Texas until a revocation warrant could be obtained from the sending state, and such parolee was not to be admitted to bail while sending state was in process of returning him to its jurisdiction. Ex parte Cantrell (Cr.App. 1962) 172 Tex.Crim. 646, 362 S.W.2d 115.

Out-of-state parolee, accepted for supervision under this article, could be held without bail upon revocation of parole warrant from sending state. Ex parte Womack (Cr.App. 1970) 455 S.W.2d 288.

*194817 4. Waiver

Parolee's agreement to accompany any Illinois messenger to Illinois and to waive extradition and formality in connection with his return to Illinois if he was found in default constituted waiver of any constitutional right which he might have had under Texas Extradition Law [Vernon's Ann.C.C.P.1925, art. 1008a (see, now, art. 51.13)]. Cook v. Kern, C.A.5 (Tex.)1964, 330 F.2d 1003.

Formal extradition proceedings are not necessary to return to another state of absconding parolees or probationers who have signed a prior waiver of extradition as a condition of their release. Ex parte Johnson (Cr.App. 1980) 610 S.W.2d 757.

5. Sufficiency of warrant

Governor's warrant that appears regular on its face creates prima facie case authorizing extradition. Chandler v. Fontenot (App. 9 Dist. 1994) 883 S.W.2d 764.

Where record contained evidence of authority of officers of sending state and evidence of identity of person to be retaken in form of governor's warrant regular on its face, court lacked authority to review decision of sending state to have probationer returned for alleged probation violations. Chandler v. Fontenot (App. 9 Dist. 1994) 883 S.W.2d 764.